

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
March 15, 2011

In the Matter of A. M. HASKINS, Minor.

No. 299481  
Wayne Circuit Court  
Family Division  
LC No. 04-436176

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Before: SAWYER, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the child under MCL 712A.19b(3)(g) and (j). We reverse and remand for further proceedings consistent with this opinion.

After A. M. Haskins was born in 2007, the court took the child into its temporary custody because the child's mother, Y. Whitlow, had had her parental rights to three children previously terminated in 2005. In that case, Ms. Whitlow had driven off in anger while the father of one of the children had attempted to put their infant into her car. The child was not buckled in and was thrown out of the vehicle. Ms. Whitlow drove over him, causing severe injuries, including brain trauma and blindness, and leaving him in a vegetative state.

Respondent-appellant and Ms. Whitlow participated in services provided by petitioner in connection with the court's temporary custody of their child, A. M. Haskins. Based on their compliance, the court dismissed its jurisdiction over this child on July 31, 2008.

On March 12, 2010, petitioner filed a permanent custody petition concerning A. M. Haskins after learning about two domestic violence incidents between respondent-appellant and Ms. Whitlow on July 11, 2008, and January 29, 2009. In both incidents, Ms. Whitlow threatened respondent-appellant with a sharp kitchen knife. In the January 29, 2009, incident, she cut respondent-appellant with the knife twice, once on his hand and the other time on his upper left arm while he was holding the child in his other arm. Both times, Ms. Whitlow was arrested; respondent-appellant failed to press charges either time.

Although he conceded he was concerned about Ms. Whitlow's conduct and the risk she posed to their child, respondent-appellant never sought a personal protection order, never sought assistance from protective services or petitioner, never sought a divorce, and never informed the court, despite the fact that the July 11, 2008, incident occurred while A. M. Haskins was in the

court's temporary custody and just weeks before the court dismissed its jurisdiction over the child.

After the January 29, 2009, incident, respondent-appellant and the child moved out of the home they shared with Ms. Whitlow to Grand Rapids. Ms. Whitlow took the child for a week in February 2009. In May 2009, she took the child again but called respondent-appellant to take her back a month later. From June to December 2009, respondent-appellant refused to let Ms. Whitlow take A. M. Haskins. In December 2009, Ms. Whitlow filed for divorce. The divorce complaint included an ex parte order requiring Ms. Whitlow to have custody of the child on alternate weeks. After he received the divorce complaint, respondent-appellant contacted protective services to express his concerns about Ms. Whitlow. However, pursuant to the terms of the order, he allowed Ms. Whitlow to take the child on alternate weeks between December 2009 and March 2010, when the petition in the current case was filed.

The court terminated respondent-appellant's parental rights pursuant to §§ 19b(3)(g) and (j) on the basis that respondent-appellant had failed to protect A. M. Haskins from Ms. Whitlow. It also found that termination of respondent-appellant's parental rights was in the child's best interests, noting that respondent-appellant's behavior showed that he had not benefited from services provided in 2008.

Termination under MCL 712A.19b(3)(g) and (j) requires clear and convincing evidence of the following:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

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(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

While respondent-appellant's behavior demonstrated that he had failed to provide proper care and custody of the child in the past, it did not demonstrate that there was no reasonable expectation that he would not be able to provide proper care and custody within a reasonable time considering the child's age or that there was a reasonable likelihood that the child would be harmed if returned to his home. From June 2009 to December 2009, respondent-appellant refused to let Ms. Whitlow take the child. While he allowed Ms. Whitlow to take the child on alternate weeks from December 2009 to March 2010, he felt compelled to do so by the terms of the ex parte order. He did, however, finally contact protective services in December 2009 after receiving the order to express his concerns about Ms. Whitlow and to seek assistance.

According to the trial court, the only risk of harm to A. M. Haskins posed by respondent-appellant was his failure to protect her from Ms. Whitlow. By refusing to allow Ms. Whitlow to take the child from June 2009 to December 2009 and by contacting protective services for assistance in December 2009, respondent-appellant acted to protect the child from Ms. Whitlow. Thus, the trial court clearly erred in terminating respondent-appellant's parental rights under §§

19b(3)(g) and (j). MCR 3.977(H)(3); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Because there are no statutory grounds in support of termination, consideration of the child's best interests is not necessary. MCL 712A.19b(5)

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Karen M. Fort Hood